

IN THE MATTER OF License No. 40532

Issued to: EDWARD TAYLOR

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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EDWARD TAYLOR

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 17 February, 1950, an Examiner of the United States Coast Guard at Galveston, Texas, suspended License No. 40532 issued to Edward Taylor upon finding him guilty of "misconduct" based upon five specifications alleging in substance, that while serving as Pilot on board the American S.S. JOHN FAIRFIELD, under authority of the document above described, on or about 30 October, 1949, while directing the navigation of said vessel, outbound through a section of Galveston Harbor Entrance known as "Outer Bar Channel," while approaching the inbound S.S. CARRABULLE, and having said vessel on his starboard hand, with only the red side light, white fore and after mast-head lights in view, he did navigate his vessel in a negligent manner, without due regard for life and property, in colliding with said inbound vessel, the S.S. CARRABULLE, by disregarding the provisions of the following Pilot Rules for Inland Waters:

First Specification: * * * *Article 19 (33 U.S.C. 204), by failing to take action in sufficient time to keep out of the way of the S.S. CARRABULLE;

Second Specification: * * * *Article 22 (33 U.S.C. 207), by navigating his vessel across the head of the S.S. CARRABULLE without reasonable cause;

Third Specification: * * * *Article 23 (33 U.S.C. 208), by failing to slacken speed, stop or reverse, upon approaching the S.S. CARRABULLE;

Fourth Specification: * * * *Article 29 (33 U.S.C. 221), by failing to take or have taken, compass bearings on the S.S. CARRABULLE; and

Fifth Specification: * * * *Article 29 (33 U.S.C. 221), by navigating his vessel at an angle across the channel from the vicinity of North Channel Lighted Buoy #3 to the vicinity of North Channel Lighted Bell Buoy #2, a distance of approximately one mile.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant was represented by counsel of his own selection and he

entered a plea of "not guilty" to the charge and each specification.

Thereupon, both parties made opening statements and the Investigating Officer introduced in evidence the record of the Coast Guard Investigation into the collision between the FAIRFIELD and the CARRABULLE. It had been stipulated between the parties that this record would be submitted as evidence at this hearing. The Investigating Officer then rested his case. Also by stipulation, the testimony of the pilot of the CARRABULLE, which had been taken at the preliminary investigation, was introduced in evidence by Appellant.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and having afforded them an opportunity to submit proposed findings and conclusions, the Examiner found the charge "proved" by proof of specifications No. 1,2,3,4, and 5; and he entered an order suspending Appellant's License No. 40532, and all other valid licenses or certificates of service held by him, for a period of four months.

From that order, this appeal has been taken, and it is urged that, according to law and the evidence in the case, the conclusions of the Examiner should be reversed with respect to all five specifications, and each of them found "not proved," for the following reasons:

- Point I: The evidence indicates that the CARRABULLE was making 12.5 to 13 knots, at the time of the collision, rather than 9 knots as found by the Examiner.
- Point II: There is no evidence to support the conclusions of the Examiner (in paragraph 8 of his opinion) that the fourth and fifth specifications were proved. Concerning the fourth specification, frequent "eye" bearings were taken and there is nothing in fact or law which required the taking of compass bearings in order to conform with the ordinary practices of good seamanship. With respect to the fifth specification, the evidence shows that it was customary to angle across the channel as Appellant did.
- Point III: The conclusion, in paragraph 22 of the Examiner's opinion, that Appellant violated Articles 19, 22, and 23, is incorrect because this was a meeting and not a crossing situation. The two ships intended to pass on nearly parallel courses, so this was a meeting situation; and the fact that Appellant could see only the red side light on the CARRABULLE did not conclusively establish this as a crossing situation. Hence, the first three specifications must fall.
- Point IV: The Examiner erred in paragraph 19 of his opinion by stating that the exchange of the whistle signals, agreeing to a starboard passing, did not change this to a case of "special circumstances" even if prior to this exchange of signals it had been a crossing situation. The Socony No. 5 (C.C.A.2, 1922), 285 Fed. 154, presents an analogous situation because, contrary to paragraph 20, the signals were exchanged as soon in this case as they were

in that one.

APPEARANCES: Messrs. Fulbright, Crooker, Freeman and Bates of Houston, Texas

Sweeney J. Doebling, Esq., of counsel.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 30 October, 1949, Appellant was directing the navigation of the S. S. JOHN FAIRFIELD while serving as Pilot on board said vessel under authority of his License No. 40532. The FAIRFIELD, a Liberty ship under enrollment, was outbound on that part of the Galveston Harbor Entrance known as the Outer Bar Channel enroute from Houston, Texas, to Mobile, Alabama. She was proceeding at full speed (8.5 knots) at the times in question and was carrying a general cargo in addition to oil in her numbers 1, 2 and 3 deep tanks. Her draft forward was 16.5 feet, and 19.5 feet aft.

Between 0228 and 0230 on 30 October, 1949, the FAIRFIELD was in collision with the S. S. CARRABULLE, a Liberty tanker under registry, which was inbound on the Outer Bar Channel enroute from New Orleans to Houston. The CARRABULLE was in a light condition (draft forward 6 feet, aft 13 feet) and making full speed of approximately twelve knots at the time of the collision. The collision occurred approximately 200 feet southward of Galveston North Channel Lighted Bell Buoy #2, Galveston Outer Bar Channel.

At this time, there was a light, drizzling rain but visibility was between five and six miles. The tide was flooding with a southerly set and there was a light wind.

The channel is approximately 800 feet wide, having a minimum of 34 feet and a maximum of 35.5 feet in depth; and in the vicinity of the accident, the depth of the water on both sides of the channel is almost as great as the water within the channel. The channel is dead straight from Galveston Lighted Bell Buoys #5 and #6 to the sea. The course to seaward is 120 degrees true and the distance from these two buoys to the open sea is approximately 2.9 miles. The collision took place about 1.6 miles below buoys #5 and #6.

At about 0215, a pilot boarded the CARRABULLE which had been lying to in the vicinity of the Sea Buoy, Galveston Bar Lighted Whistle Buoy #1 about two miles southeasterly from the point of collision and outside of the Channel. As the CARRABULLE rang up full speed and came around to steady on Lighted Bell Buoy #2 (a course of approximately 320 degrees true), the respective pilots and masters of the FAIRFIELD and the CARRABULLE sighted the opposing vessels. At this time, the FAIRFIELD was between Lighted Bell Buoys #5 and #7, a little over four miles distant from the CARRABULLE. The latter ship was bearing between two and four points on the starboard bow of the FAIRFIELD and the range lights and red side light of the CARRABULLE were the only lights visible at any time to those aboard the FAIRFIELD except

immediately prior to the collision when the green side light came into view. Conversely, the range lights and the green side light of the FAIRFIELD were the only lights of the latter ship visible to those on the CARRABULLE until immediately before the collision.

When the FAIRFIELD was between Lighted Bell Buoys #5 and #6, she was in the center of the channel and changed her course to angle across to the north side of the channel by steadying on Lighted Bell Buoy #2-B (which is near the end of the channel about a mile below Lighted Bell Buoy #2), a course of approximately 118 degrees true. No compass bearings of the CARRABULLE were taken on the FAIRFIELD at any time between the time of sighting the CARRABULLE and the collision.

The two vessels continued at full speed on these same courses without sounding any signals. The course of the CARRABULLE took it into the channel about a mile from its southeastern extremity. At about the time the CARRABULLE angled into the channel in this manner, a two-blast whistle signal was initiated by Appellant to request a starboard to starboard passing. The CARRABULLE promptly answered with two blasts and both vessels swung hard left in an attempt to negotiate the starboard to starboard passing. One minute after the exchange of signals, the starboard bow of the CARRABULLE struck the starboard quarter of the FAIRFIELD at number four hold at an angle of 20 to 30 degrees. Four crew members of the CARRABULLE were slightly injured and the total damage probably exceeded \$100,000. The vessels disengaged and proceeded to Bolivar Roads under their own power. Nothing in the record indicates that either vessel reduced speed or took any other preventive action.

There is no record of any prior disciplinary action having been taken against Appellant by the United States Coast Guard and he has been acting as a pilot for about twenty-five years.

OPINION

The most important question raised by Appellant is whether this was a meeting or a crossing situation. If it is determined to be the former, then Appellant's contention, that he cannot be found guilty of having violated Articles 19, 22 and 23 of the Inland Rules, must be upheld and the first three specifications found "not proved." These three statutory rules would be applicable to the FAIRFIELD as the burdened vessel if it were a crossing situation but they would have no significance if the two ships were meeting.

According to Article 18 of the Inland Rules (33 U.S.C,203), two vessels are defined to be meeting when they "are approaching each other head and head, that is, end on, or nearly so." Appellant urges that, regardless of other consideration, this was a meeting situation because the CARRABULLE'S "obviously intended course" up the channel would cause the two ships "to pass on nearly parallel lines." This position is supported by cases where the vessels are both navigating on the same river or channel and they are temporarily heading in crossing directions due to the curves in the river or channel. The Victory (1896), 168 U.S. 410. Such a case should be treated as one of meeting vessels, unless the contrary appears, either from the obviously intended courses or from signals. The Arrow (C.C.A. 2. 1914), 214 Fed. 743. But, as mentioned by the Examiner in

his Opinion, it was held in The Delaware (1896), 161 U.S. 459, that where one vessel on the outside of the channel is on a course cutting across the channel and is on the starboard bow of another vessel in the channel, it is a crossing situation. This seems to be the rule applicable to the present case. The effect of the cases requires that, if a vessel is in doubt as to whether she is under a duty to keep out of the way, she should assume that she is the burdened vessel and should act accordingly. Matton Oil Corporation v. The Cree (C.C.A.2, (1942), 130 F. 2d. 195.

There is substantial evidence that the CARRABULLE was bearing at least two points on the starboard bow of the FAIRFIELD; that only her red side light was visible on the FAIRFIELD until immediately prior to the collision; and that their courses intersected at an angle of about twenty degrees. These are all pertinent factors to be considered in determining the obligations of the two ships. Although it has been held that two ships were on crossing courses when their courses intersected by as little as one degree at a distance of two miles (The Comus (1927), 19 F. 2d 774), the more decisive factors in this case appear to be the bearing of the CARRABULLE from the FAIRFIELD and the fact that only her red side light could be seen.

The meaning of "meeting end on, or nearly end on" is clarified by the additional wording in Article 18 that this rule applies "by night to cases in which each vessel is in such a position as to see both the sidelights of the other" ahead; and that it does not apply "by night to cases where. . . a red light without a green light. . . is seen ahead. . . ." By neither of these criteria would the FAIRFIELD and the CARRABULLE be considered to have been meeting vessels. With respect to such cases as this, the following appears on pages 66 and 67 in "Griffin on Collision":

"While there is singularly little direct authority on the subject, the foregoing cases would seem to indicate that, if one has the other half a point on her starboard bow and is herself half a point on the other's port bow, the divergence is not sufficient to take the case out of Article 18 (but cf. the KONING WILLEM II, [1908]Prob. Div. 125, 131), but that, if either has the other more than half a point on the bow, the case is one of crossing vessels. This view would seem consistent with the rule for night, which depends on the sidelights (the GRAND REPUBLIC, 16 Fed. 424, [1883]). A properly screened sidelight should not show more than half a point across the bow (the EDWIN SLICK, 286 Fed. 43, 47 [1923]; the THINGVALLA, 48 Fed. 764, 769 [1891], and half a point is, therefore, the limit at which both sidelights would be displayed to the other vessel. If one vessel has the other more than half a point on the starboard bow, and therefore is showing her green light only to the other's red or red and green, it is a crossing situation. The same result should follow by day in similar situations."

Consequently, Article 18 is not applicable because the CARRABULLE was not "ahead" of the FAIRFIELD as well as because, even if the CARRABULLE had been "ahead" of the FAIRFIELD, the operation of the meeting rule would have been negated by the fact that "a red light without a green light" would have been "seen ahead." This disposes of Appellant's contention that this was a meeting situation.

The crossing rules contained in the first three specifications (Articles 19, 22 and 23) are,

generally, applicable when the privileged vessel is on a definite course, there is risk of collision and the ships have sufficient time and space to carry out the maneuvers required by these crossing rules. The present case meets these requirements. The CARRABULLE made no change sufficient to be considered a change of course from the time she was seen by Appellant at a distance of more than four miles. And it has been held that there is risk of collision and the crossing rules do apply if the vessels are approaching in crossing positions, even though one vessel may intend to swing into the same channel which the other is traversing so that their intended courses would not, in the end, actually intersect. The Kingston (D.C.N.Y., 1909), 173 Fed. 992.

Article 19 states that the burdened vessel must "keep out of the way of the other." This fundamental rule in crossing situations imposes on the burdened vessel the primary responsibility for avoiding collision. This duty is ordinarily performed by going under the stern of the privileged vessel in obedience to Article 22 which requires the burdened vessel to "avoid crossing ahead of the other" unless the circumstances render it unsafe to do so. If the burdened vessel attempts to cross the bow of the other, she "takes the risk that the approaching vessel, while fulfilling her own obligation of keeping her course, may reach the point of intersection before she has passed it herself." The E.A. PACKER (1891), 140 U.S. 360. "If she makes the attempt, and thereby brings about collision, she is in fault for not keeping out of the way of the privileged vessel." The George S. Shultz (C.C.A. 2, 1898), 84 Fed. 508. If there is undue delay in directing her course to starboard, she will be held in fault. The Carroll (1868), 75 U.S. 302.

In connection with the third specification, Article 23 requires that the burdened vessel must, "if necessary, slacken her speed, or stop, or reverse." This is a method of performing her general duty to keep out of the way and is very strictly enforced. The Breakwater (1894), 155 U.S. 252; The New York (1899), 175 U.S. 187. She must reverse promptly in "the presence of danger or anticipated danger" (The Straits of Dover (C.C.A. 4, 1903), 120 Fed. 900); and "any delay in reversing" is "at her own risk." (The Intrepid (D.C.N.Y., 1891), 48 Fed. 327). Even in cases where there has been some doubt as to whether a vessel was on a definite course and thereby a privileged vessel, the courts have held that the potentially burdened vessel should have at least slowed down and waited until the situation developed. The Senator Rice (C.C.A.2, 1915), 223 Fed. 524.

Appellant unquestionably failed to keep the FAIRFIELD clear of the CARRABULLE which was the privileged vessel. His failure to do so was a violation of Article 19 of the Inland Rules of the Road. And there is substantial evidence to show that Appellant had ample opportunity to steer his ship astern of the CARRABULLE by either making proper course changes or slackening speed. Since he failed to take these precautions, he also violated Articles 22 and 23. Therefore, the conclusion that the first, second and third specifications were "proved" must be upheld.

Appellant's argument is that, even if a crossing situation existed originally, it was changed to one of "special circumstances" when the whistle signals for a starboard to starboard passing were exchanged. In support of this contention, Appellant claims that the case of The Socony No. 5 (C.C.A. 2, 1922), presents an analogous situation. The opinion in that case does not state how long the two whistle signals were exchanged before the collision occurred but it indicates that the

originally privileged vessel lost her status as such by failing to maintain her speed after the passing agreement had been entered into; and that the latter vessel had ample time, after the exchange of signals, to navigate in such a way as to avoid the collision. In the present case, it has been found that the collision resulted one minute after the signals had been blown and there was not sufficient time to comply with the agreement so as to avoid a collision. Even though the CARRABULLE assented to the starboard to starboard passing, the FAIRFIELD was not relieved of fault for having violated the crossing rules. This is true because the agreement was reached at such a late time that the CARRABULLE was unable, by proper maneuvering, to prevent the accident. In the case of The Lexington, (C.C.A. N.Y., 1935), 79 F. 2d. 252, the court said that where the burdened vessel elected to perform her duty to keep out of the way by crossing the bow of the privileged vessel after obtaining her assent, the burdened vessel took the risk and the privileged vessel did not undertake to keep out of the way of the burdened vessel but only to do what she could to make it possible for the burdened vessel to keep out of her way. It was further held that the burdened vessel has no right to give the other a signal of two whistles unless she can cross the privileged vessel's bow without requiring the latter to change her course or her speed; and:

"A reply of two whistles, in itself means nothing more than an assent to this course, at the risk of the vessel proposing it. Such a reply does not of itself change or modify the statutory obligation of the former to keep out of the way as before, nor does it guarantee the success of the means she has adopted to do so."

Consequently, the FAIRFIELD remained the burdened vessel and was bound by her original statutory duties whether or not the situation was altered in extremis to become one of "special circumstances."

It is my opinion that the conclusions pertaining to the fourth and fifth specifications must also be sustained. Despite the fact that a seaman's eye sometimes may serve as useful a purpose as compass bearings, it is also true that it would be impossible for any seaman to consistently estimate bearings of distant ships within one or two degrees. And a difference in bearing of one or two degrees is frequently of great importance when utilized to indicate whether two vessels are on collision courses with each other. In connection with the fifth specification, the case of The Lexington (C.C.A. 2, 1921), 275 Fed. 279, is ample authority for the proposition that the burdened vessel takes the risk when she departs from the usual rules and acts on the chance that the privileged vessel will follow a customary course rather than maintain her course and speed.

ORDER

The Order of the Examiner dated 17 February, 1950, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 21st day of August, 1950.